IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

WP(C).No. 23716 of 2003(W)

PETITIONERS:
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1. **SREEDEVI AMMA.R., W/O. RAVEENDRAN, AGED 41 YEARS, PART TIME SWEEPER CUM SCAVANGER, TELECOM CENTRE, KARUNAGAPPALLY, RESIDING AT RESMI BHAVAN, SVM P.O., KOZHIKKODEMAKE, KARUNAGAPPALLY.**

2. **G.UNNIKRISHNAN, S/O. GOVINDA PILLAI, AGED 32 YEARS, PART TIME SWEEPER CUM SCAVANGER, TELECOM CENTRE, PARIPPALLY, RESIDING AT VILAYIL PUTHENVEEDU, THAZHAMVADAKKU, CHATHANNOOR.**

BY ADV. SRI. M.R.RAJENDRAN NAIR,
SRI.R.SREERAJ,
SRI.HARIRAJ,
SMT.REKHA VASUDEVAN,
SMT.VINEETHA B.

RESPONDENTS:
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1. **UNION OF INDIA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, MINISTRY OF COMMUNICATIONS, NEW DELHI.**

2. **THE CHIEF GENERAL MANAGER, BSNL, KERALA CIRCLE, TRIVANDRUM**

3. **THE DIVISIONAL ENGINEER, CENTRAL TELEGRAPH OFFICE, KOLLAM.**

4. **THE SUB DIVISIONAL ENGINEER (TT), CENTRAL TELEGRAPH OFFICE, KOLLAM.**

W.P.(C). NO.23716/2003:

5. THE SUPERINTENDENT, TELEGRAPH (TRAFFIC),
CENTRAL TELEGRAPH OFFICE, KOLLAM.

BY ADV.SRI.P.VIJAYAKUMAR, SC, BSNL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/07/2007, ALONG WITH W.P.(C). NO. 29812/2003 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

W.P.(C). NO.23716/2003:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1.A: COPY OF THE REPRESENTATION DTD. 05/11/1998 SUBMITTED BY THE P.1. TO THE R.5.

EXT.P.1.B: COPY OF THE REPRESENTATION DTD. 30/10/1998 SUBMITTED BY THE P.2. TO THE R.5.

EXT.P.2: COPY OF THE QUOTATION OBTAINED FROM THE P.1.

EXT.P.3: COPY OF THE QUOTATION OBTAINED FROM THE P.1.

EXT.P.4: COPY OF THE QUOTATION DTD. NIL. SUBMITTED BY THE P.2.

EXT.P.5.A: COPY OF THE MEMO NO. OA 21/99/17 DTD. 13/04/1999.

EXT.P.5.B: COPY OF THE OA 21/99/16 DTD. 13/04/1999 ISSUED BY THE R.4.

EXT.P.6: COPY OF THE FINAL ORDER IN O.A. 854/99 ON THE FILE OF THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXT.P.7: COPY OF THE JUDGMENT DTD. 26/02/2003 IN O.P. 24895/1999 ON THE FILE OF THIS HONOURABLE COURT.

EXT.P.8: COPY OF THE LETTER DTD. 13/03/2002.

EXT.P.9: COPY OF THE LETTER DTD. 29/09/2000.

EXT.P.10: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS TO THE R.3.

EXT.P.11: COPY OF THE ORDER NO. O.P. 24895/99/2002-03/11 DTD. 25/06/2003 ISSUED BY THE DIVISIONAL ENGINEER (TT), CTO, KOLLAM.

EXT.P.12: COPY OF THE TENDER NOTICE DTD. 03/09/2003 ISSUED BY THE R3.

W.P.(C). NO.23716/2003:

EXT.R1: COPY OF THE CIRCULAR NO. 269/39/84-STN DTD. 14/08/1984 ISSUED FROM THE OFFICE OF THE DIRECTOR GENERAL, P & T, NEW DELHI BANNING ENGAGEMENT OF PART TIME CASUAL LABOURERS.

EXT.R2:COPY OF THE QUOTATION SUBMITTED BY THE P.1. ON 30/11/98 TO IN-CHARGE, TELECOM CENTRE, KARUNAGAPALLY.

EXT.R3.SERIES; R-3 (A) AND R-3 (B) - COPIES OF QUOTATIONS SUBMITTED BY THE P.2. ON 27/11/92 AND 18/09/98 TO IN-CHARGE, TELECOM CENTRE PARIPALLY.

//TRUE COPY//

prv.

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).Nos.23716 & 29812 OF 2003
AND W.P(C).NOS.3017, 23761,
32003, 32694, 34797, 35782
& 36078 OF 2005

Dated this the 6th day of July, 2007

JUDGMENT

The petitioners claim that they are casual labourers having been working, either for the erstwhile Telecom Department or its successor, the BSNL. The quality of their appointment as casual labourers or contract labourers is a moot question that may have to be decided to finally resolve the issues between the parties. There is also dispute as to whether some of the petitioners were actually engaged at all. The BSNL had a scheme, by which, those working on casual basis were entitled to be absorbed on satisfaction of three conditions. The entitlement of each of the petitioners to any order entitling them to enter service on a regular basis will be taken upon satisfaction of all those three conditions. This scheme of 1989 thus entitles a person to go in to the regular stream, provided he establishes his entitlement on the basis of those conditions which are provided

in the scheme. While BSNL would have offered such a scheme, that cannot totally negative the right of any others who would have been outside the terms of that scheme, for regularisation or for other relief, provided they would have been otherwise entitled to such relief in terms of the laws governing the labour and the establishments in India, as may be applicable to them. Hence, the entitlement of each of the writ petitioners in these cases would essentially involve the adjudication of the entitlement of disputed questions of facts relating to each claim for regularisation and the nature of claims are essentially within the realm of the claims of a person to be a workman. These are issues which can be appropriately considered by the established labour courts or the Industrial Tribunal, as the case may be, in appropriate proceedings in terms of the law, either by reference under the Industrial Disputes Act, 1947 or by any other procedure if permissible in law. It would also be inappropriate to adjudicate the disputed questions of facts in exercise of authority under Article 226 of the Constitution of India, having regard to the different stages of rights that may ultimately fall

for consideration on the applications of the petitioners, who could be treated as marginals at least in terms of availability of legal remedy and assistance.

In the aforesaid circumstances, these writ petitions are disposed of ordering that the petitioners if so advised, can move the appropriate authorities under the labour laws to obtain adjudication of their claims and disputes in accordance with laws and further directing that if such requests are made to the competent authority within a period of one month from now, the competent authorities shall proceed to take appropriate action in accordance with law to generate the necessary proceedings within a period of 45 days therefrom. Hoping that the time limits as aforedirected will be maintained, all interim orders, where ever available in these writ petitions, will continue to govern parties for a period of three months. It is clarified that this Court has not expressed anything on the merits of the claims. It is further clarified at the request of the counsel for BSNL that

the question of maintainability of the references, if any, is left open.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

W.P(C).Nos.23716 & 29812 OF 2003
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JUDGMENT

6TH JULY, 2007.

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